IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.15911 of 2004

Between:

Smt. Masarath Jehan Begum W/o Mohd. Osman Shaheed,
R/o. 8-13-67/1, Raghvendra Colony, Shivrampally Road, Hyd.

..... PETITIONER

AND

1 Govt of A.P., through its Secretary, Health Medical and

family Welfare Department, having Office at Secretariat, Hyderabad
2 The Collector, Hyderabad District having Office at Nampally Station Road,

Hyderabad.

3 The Commissioner of Back Ward Class Welfare, having Office

at Mouzamjahi Road, Hyderabad.
4 Special Chief Secretary cum Chief Commissioner of Land Administration,
having Office at Nampally, Station Road, Hyderabad.
5 The Commissioner, Indian Medicine and Homeopathy Department

having office at Market Street, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order, direction or a writ particularly in the nature of Writ of Mandamus declaring that the action of respondents No.1 to 4 thereby dividing the land, situated at Narayanaguda, bearing T.S. No.2 Block C, Ward No.62 of Nampally Mandal

thereby alienating the same in favour of the respondent No.4 is highly illegal, arbitrary and liable to be set aside as it can be used only for the purpose of Construction of Unani Hospital. Consequently this Hon'ble Court may be pleased to direct the respondents to allot the entire land to the respondent No.5 for the construction of Unani Hospital and pass any other order or orders as deemed fit and proper in the circumstances of the case in the interest of justice.

Counsel for the Petitioner: Mr.MOHD.MOIN AHMED QUADRI

Counsel for the Respondents: GP FOR REVENUE (Assignment)

The Court at the admission stage made the following :

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ORAL ORDER: (per **THE HON'BLE THE CHIEF JUSTICE**)

This writ petition is filed in public interest questioning the action of respondents in allotting land to the extent of 1975 square metres to the Commissioner of Backward Classes Welfare for construction of B.C.Bhavan. Grievance of the petitioner is that by document No.788 of 1356 Fasli, Nawab Nizamath Jung Bahadur of Hyderabad gifted the land to the Department of Medicine, Government of Andhra Pradesh for the purpose of construction of Unani Hospital. It is the submission of the petitioner that purpose should be achieved by respondents in fulfilling the will and desire of the donor of establishing Unani Hospital and not to be used for any other purpose.

We have heard the learned counsel for the parties and also gone through the reply filed by Smt. P.Leela, Mandal Revenue Officer, Nampally Mandal, Hyderabad district.

No doubt, as per the gift deed executed on 12-7-1356 Fasli, gift of the land was made in favour of the Government through the Department of Medicine for the purpose of construction of Unani Hospital. But, the donor nowhere recited either to resume the land in case it is not utilized for the said purpose or putting any restriction on the donee that it cannot be used or utilized for any other purpose. As per the affidavit in reply and even as per the version of the petitioner, there has been long drawn litigation with the encroachers. The total extent of land was 3250 sq.yards equivalent to 2728 sq.mtrs. situated at Narayanaguda, Hyderabad. Since the Government did not propose to construct unani hospital on the land, a request was made by one Dr. G.S.Melkote that land may be conveyed to him in consideration of

his paying Rs.24,000/- to the Relief Committee. The consent of the donor was obtained and lease was granted to Dr. G.S.Melkote of the land for a period of 15 years. Land was handed over to Dr.G.S.Melkote in the year 1951. The lessee did not utilize the land for the purpose for which it was taken by him on lease. After dismissal of C.C.C.A.No.32 of 1983 on 15-11-2002, Government decided to alienate a part of the land for the purpose of construction of B.C.Bhavan. Remaining land to an extent of 425 sq.mtrs was allotted for Urban Health Post (Unani). Affidavit in reply says that besides earmarking 425 sq.mtrs for construction of unani hospital, the remaining extent of left over land can also be utilized for the purpose of Unani hospital.

We record the statement in the counter affidavit that besides an extent of 425 sq.mtrs earmarked for construction of Unani Hospital, the remaining extent left over can also be utilized for the purpose of Unani Hospital and close the writ petition without any further directions.

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DEVINDER GUPTA, C.J.

27-10-2004

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C.V.RAMULU, J

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, Health Medical and Family Welfare Department,

Government of Andhra Pradesh, Secretariat, Hyderabad

2 The Collector, Hyderabad District having Office at Nampally Station Road,

Hyderabad.

3 The Commissioner of Backward Class Welfare, Mouzamjahi

Road, Hyderabad.

4 Special Chief Secretary cum Chief Commissioner of Land Administration, Nampally Station Road, Hyderabad.

5 The Commissioner, Indian Medicine and Homeopathy Department

having office at Market Street, Secunderabad.

6. 2CCs to Govt.Pleader for Assignment, High Court Buildings, Hyderabad (OUT)

7. 2CD copies